

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT ("MOA"), is made and entered into by and between HEADLANDS RESERVE, LLC, a Delaware limited liability company ("LANDOWNER"), and CITY OF COSTA MESA, a Municipal Corporation ("CITY").

RECITALS

A. CITY acquired for park, habitat conservation, natural open space and passive recreational purposes real property known as "Fairview Park," as identified in Exhibit "A" attached hereto on or about 1986. Fairview Park is located within the CITY, in the County of Orange, California.

B. The Costa Mesa City Council ("Council") approved the Fairview Park Master Plan in December 1997 ("Master Plan") and revised the Master Plan in February 2001 and November 2002.

C. Effective as of July 17, 2000 (and as revised by Council on January 21, 2003), Council adopted Policy Number 500-11, which established a process for review and approval of proposed Fairview Park projects implementing the Master Plan. Said policy establishes the Public Services Department as the lead department for processing projects associated with the Master Plan. Policy 500-11 recognizes that habitat restoration projects are among those activities which are consistent with the Master Plan.

D. The Master Plan seeks to enhance and protect the native flora and fauna and rare biological resources of this area of Orange County.

E. Fairview Park is immediately adjacent to Talbert Nature Preserve ("Talbert") and linked with the Santa Ana River system of trails and parks. Talbert is owned by the County of Orange and is part of the open space and natural habitat reserve system of the Orange County Central/Coastal Subregional Natural Communities Conservation Program for Coastal Sage Scrub ("O.C. Central/Coastal NCCP"). Fairview Park and Talbert are part of the County of Orange's Local Coastal Program for a linked set of parks progressing from the coast up the Santa Ana River to Fairview Park. Individuals of the federally-threatened coastal California gnatcatcher ("Gnatcatcher") are known to occupy habitat near Fairview Park and Talbert, and habitat restoration in these parks will provide an opportunity for the Gnatcatcher to expand its presence in this part of Orange County.

F. The Master Plan calls for an area within Fairview Park to be restored and enhanced to coastal sage scrub. This area is shown in Exhibit "B" attached hereto.

G. LANDOWNER is a participating landowner in the O.C. Central/Coastal NCCP and an owner of land in the City of Dana Point, California, commonly known as the Dana Point Headlands site ("Headlands Site").

H. As a condition of approval of certain land development activities on the Headlands Site, the California Coastal Commission required LANDOWNER to create,

restore or enhance approximately 11 acres of coastal sage scrub on property other than the Headlands Site.

I. LANDOWNER has identified Fairview Park as an ideal area within which to conduct such coastal sage scrub restoration/enhancement activities, inasmuch as: (1) the Master Plan seeks such sage scrub restoration/enhancement within Fairview Park, but as of yet, CITY does not have sufficient funds to perform such restoration/enhancement, (2) Fairview Park is part of a larger natural open space/habitat preservation system extending from the coast, inland along the Santa Ana River, (3) such restoration/enhancement will provide an opportunity to benefit the Gnatcatcher, a species known to exist in the vicinity of Fairview Park, (4) Fairview Park is close to the Coastal Zone, and (5) Fairview Park is immediately adjacent to lands within the O.C. Central/Coastal NCCP and may eventually become a component of that habitat reserve system.

J. LANDOWNER desires to enter Fairview Park and conduct coastal sage scrub habitat creation, restoration, maintenance and enhancement activities on approximately 11 acres identified by CITY in the Master Plan as needing such restoration and shown in Exhibit "C" attached hereto (the "Restoration Site"). The exact size of the Restoration Site will be determined by the City of Dana Point prior to the start of Restoration Activities, but the parties anticipate that the Restoration Site will be no smaller than 10 acres and no larger than 12 acres.

NOW, THEREFORE, in consideration of the Recitals and the covenants herein set forth, CITY and LANDOWNER do hereby agree as follow:

1. Access to Restoration Site. CITY hereby grants LANDOWNER, its agents, contractors, subcontractors and their employees (collectively referred to herein as "Agents") a nonexclusive license and permission to enter upon Fairview Park and the Restoration Site for the purposes set forth in this MOA and an exclusive license to restore/enhance/maintain habitat on the Restoration Site and implement the Plan (as defined in paragraph 2), subject to compliance with the terms of this MOA. CITY shall provide LANDOWNER and its Agents access to the Restoration Site at all times during the term of this MOA to conduct coastal sage scrub restoration, enhancement, maintenance and creation activities, including, but not limited to, site preparation, soil preparation, invasive and exotic species eradication, seeding, planting, irrigation, erosion control, weeding, pest control, debris removal, monitoring, site protection and maintenance activities (collectively referred to herein as "Restoration Activities"). Due to the sensitive nature of the Park, the LANDOWNER must submit in writing, and the CITY must approve, the exact route through Fairview Park by which the LANDOWNER or its agents and employees may access the Restoration Site from the nearest public right of way. No other access route will be allowed without prior written approval from the CITY. CITY reserves the right to access the Restoration Site and Staging Area at all times to observe and monitor all activities undertaken by LANDOWNER to ensure conformance with the terms of this MOA.

2. Responsibilities in Conducting Restoration Activities.

LANDOWNER and its Agents shall conduct the Restoration Activities in a manner consistent with "Fairview Park Coastal Sage Scrub Restoration and Monitoring Plan", prepared by Glenn Lukos Associates, dated March 28, 2005 ("Plan"). LANDOWNER assumes full responsibility for the implementation, supervision and management of the Restoration Activities according to the Plan. LANDOWNER shall pay all costs to manufacture and install informational and construction signs at the Restoration Site prior to start of the work. Wording, material type, size, and number of required signs shall be approved by the CITY. While on the Restoration Site, LANDOWNER shall comply and shall cause its Agents to comply with all applicable governmental and environmental laws and regulations. LANDOWNER shall not conduct its Restoration Activities in such a way so as to physically interfere with other habitat restoration activities which may be underway or occurring within Fairview Park. In the event the Plan calls for use of, or LANDOWNER intends to use, plant materials which are not specifically authorized by the Fairview Park Master Plan, then LANDOWNER shall be required to seek and obtain a revision of the Fairview Park Master Plan in accordance with City Council Policy 500-11 for inclusion of any such plant materials in the Plan. LANDOWNER shall be responsible for obtaining any governmental permits required to conduct the Restoration Activities at its sole cost and expense. CITY shall cooperate with LANDOWNER as requested and as reasonably necessary to enable LANDOWNER to fully implement the Plan, including, but not limited to, cooperation in obtaining any necessary governmental permits, approvals, and utility services for the Restoration Activities, provision of access to the Restoration Site (including keys to any locked gates), coordination of other habitat restoration activities within or nearby Fairview Park, and provision of maps, CITY ordinances, and data in the possession of the CITY pertaining to or pertinent to Fairview Park or the Restoration Activities; provided that such cooperation does not result in any out-of-pocket costs to CITY. CITY shall provide LANDOWNER with access to and use of any existing irrigation lines, meters and controls under the control of CITY which may exist in the vicinity of the Restoration Site, provided that such access to or use does not unreasonably interfere with other uses of these items by CITY. LANDOWNER shall prepare a Declaration of Restrictions for the Restoration Site in a form and content acceptable to the CITY. CITY shall record a Declaration of Restrictions over the Restoration Site restricting the use of such site to conservation open space purposes in perpetuity without unreasonable delay after LANDOWNER's commencement of Restoration Activities pursuant to the terms of this MOA, and shall not be obligated to record a Declaration of Restrictions if LANDOWNER does not commence or continue Restoration Activities by reason of any judicial or administrative challenge being pending or adversely resolved precluding LANDOWNER from conducting the land development activities on the Headlands Site referred to in Recital H hereto.

3. Selection of Contractors.

LANDOWNER shall have the right to select any Agents which it deems appropriate for the implementation of the Plan. LANDOWNER shall require payment of prevailing wages for work done in connection with and at the Restoration Site to the extent required by law. LANDOWNER shall defend and indemnify CITY, at its sole expense, from and against any claims, demands, suits, fines, penalties, orders or administrative rulings relating to the payment or non-

payment of prevailing wages to any person performing work at the Restoration Site as called for in this Agreement.

4. Initiation and Continued Performance of Restoration Activities. LANDOWNER shall initiate Restoration Activities pursuant to the Plan within four (4) months of the Effective Date (defined at paragraph 25 herein) and continue to implement the Plan diligently until the completion of the five-year maintenance and monitoring period and the attainment of the final success criteria specifically set forth in the Plan; provided that: (1) no judicial or administrative challenges either are pending or have been resolved which would preclude LANDOWNER from conducting the land development activities on the Headlands Site referred to in Recital H hereto according to existing City of Dana Point approvals, and (2) this four-month period shall be automatically extended as necessary if the restoration biologist implementing the Plan determines that weather or seasonal conditions are such as to justify additional delay in the implementation of a phase of the Plan in order to ensure appropriate biological conditions for implementation of such phase of the Plan. Failure by LANDOWNER to initiate Restoration Activities within this period shall constitute a default under this MOA and provide CITY with the right to terminate this MOA in accordance with the procedures in paragraph 18 (Defaults and Remedies) of this MOA; provided that CITY shall not unreasonably refuse to extend this period due to factors beyond the control of LANDOWNER as set forth in paragraph 26 (Acts Beyond the Control of Parties) herein. Should LANDOWNER not initiate Restoration Activities within four months of the Effective Date and provided that conditions set forth in paragraph 26 herein do not exist, CITY may elect, in its sole discretion, to extend the period wherein LANDOWNER may initiate the Restoration Activities. Failure of LANDOWNER to diligently pursue implementation of the Plan, absent conditions beyond the control of LANDOWNER as set forth in paragraph 26, shall provide CITY with the right to draw on the Performance Bond, in accordance with paragraphs 11 and 18 herein, and diligently manage and implement the Plan in accordance with the provisions of the Plan. Should judicial or administrative challenges, pending or adversely resolved, preclude LANDOWNER from commencing the Restoration Activities within twelve (12) months from the date of execution of this MOA, CITY may elect, in its sole discretion, to terminate this MOA and conduct any such Restoration Activities as it chooses on the Restoration Site using funding available to it from any source. Should CITY terminate the MOA under these circumstances, CITY shall have no liability to LANDOWNER or obligation to assist LANDOWNER in locating an alternative habitat mitigation site for the Headlands Project.

5. Hours of Operation on the Restoration Site. Unless CITY's Public Services Department has provided LANDOWNER with written permission to do so, LANDOWNER and its Agents shall not conduct Restoration Activities on the Restoration Site: (1) before 7:00 a.m. (PST) or after sunset, (2) on Saturdays or Sundays, and (3) on Federal or State Holidays.

6. Fencing of Restoration Site. LANDOWNER does not presently anticipate the need to fence the Restoration Site during the Restoration Activities, beyond the possible need to erect orange snow-fencing or similar fencing around the boundaries

of some active restoration areas and some limited, temporary security fencing to protect equipment and materials immediately adjacent to the Restoration Site (the latter fencing is described further in paragraph 7 herein). Should the restoration biologist subsequently determine that fencing (beyond the use of orange snow-fencing) of the Restoration Site is required for success of the Restoration Activities, the restoration biologist will first obtain authorization from CITY's Public Services Department in writing, after providing CITY with a written explanation of why such fencing is deemed necessary to the success of the Restoration Activities. LANDOWNER shall receive prior approval from the CITY for the type, size, location and material of any fencing to be used at the Restoration Site.

7. Storage of Equipment and Material at Restoration Site. CITY will provide a staging area ("Staging Area") for temporary storage of container plants, landscape equipment (including tools), and the like on a site within Fairview Park immediately adjacent to the Restoration Site. The Staging Area will be less than 1 acre in size, unless the Parties otherwise agree to a larger area at a later date. The Staging Area will be located so as not to unreasonably interfere with the public's use of Fairview Park. LANDOWNER shall be authorized to fence the Staging Area for security purposes temporarily. LANDOWNER shall receive prior approval from the CITY for the type, size, location and material of any fencing to be used at the Staging Area. It is anticipated that the Staging Area will not be required after completion of the initial 120-day establishment period for the plants.

8. Utilities. LANDOWNER shall be responsible for water charges for water supplied to the Restoration Site and Staging Area for purposes of implementing the Restoration Activities in the Plan. LANDOWNER shall be responsible for the cost of purchasing and installing any supply and irrigation water lines necessary to implement the Plan to the point at which the success criteria of the Plan are met, however, the Parties anticipate that irrigation water is not likely to be necessary at least after Year 3 of the Plan. If an existing water meter is not available, CITY shall provide access at no cost to LANDOWNER to an existing irrigation/water meter utilized by the CITY which can service the Restoration Site and Staging Area. CITY shall not be responsible for constructing, extending, or expanding any existing irrigation systems, supply lines, or water meters to serve the Restoration Site. LANDOWNER shall be responsible for any charges for water and electricity supplied to the Restoration Site for purposes of implementing the Restoration Activities under the Plan, to the point at which the success criteria of the Plan are met.

9. Monitoring of Restoration Site by LANDOWNER. LANDOWNER shall arrange for a qualified restoration biologist to monitor the vegetation conditions of the Restoration Site for a period of five (5) years upon completion of the initial plant installation phase of the Plan, in accordance with the terms of the Plan. LANDOWNER shall notify CITY in writing of the commencement of the minimum five (5) year monitoring period for the Restoration Site called for herein. LANDOWNER will undertake remedial procedures during this five year monitoring period in accordance with the terms of the Plan in order to achieve the final success criteria for the Restoration Activities set forth in the Plan. LANDOWNER shall continue this monitoring and management phase, at its sole cost and expense, for a period longer

than the Plan's initial five year period should such longer period be required under the Plan to meet the final success criteria of the Plan. LANDOWNER's obligations with respect to monitoring of, management of and remedial actions for the Restoration Site shall terminate upon achieving the final success criteria of the Plan, in accordance with the terms of the Plan, after which time LANDOWNER shall have no further obligations to conduct Restoration Activities (including, but not limited to, monitoring, maintenance and remedial actions) under this MOA. LANDOWNER shall give the CITY sufficient advance written notification of the impending successful achievement of the Plan's success criteria so as to allow for proper transfer of maintenance responsibilities to CITY. In no event shall such notice be less than three (3) months. LANDOWNER shall continue to be responsible for monitoring and maintenance of the Restoration Site until the Plan's success criteria are met or the expiration of the notification period to CITY, whichever is later. LANDOWNER shall provide to CITY a copy of any notification or certification from the California Coastal Commission and/or City of Dana Point accepting or acknowledging achievement of the Plan's success criteria. LANDOWNER shall also provide to CITY a certification from a qualified restoration biologist demonstrating the achievement of the success criteria. Prior to completion of the monitoring phase of the Plan, LANDOWNER shall provide the CITY with a long-term maintenance manual prepared by a qualified restoration biologist, as well as an estimated annual budget to monitor and manage the Restoration Site, based on specific experience gained during the five (5)-year monitoring period.

10. Maintenance Obligations of CITY. During the term of this MOA, CITY, at no cost or expense to LANDOWNER, shall provide for general security and security monitoring of the Restoration Site in a manner consistent with such similar activities at other areas within Fairview Park. During the term of this MOA, it shall be CITY's responsibility, at its cost and expense, to insure that oversight of the Restoration Site is performed at a level similar to other CITY park facilities used as natural open space. During the term of this MOA, LANDOWNER will be responsible for any damage done to the Restoration Site by acts of nature, vandalism or by LANDOWNER or its Agents and, prior to departing from the Restoration Site, shall repair any such damage to the Restoration Site.

11. Performance Bond. LANDOWNER shall provide CITY with two performance bonds in order, collectively, to cover all costs for preparing and stabilizing the Restoration Site, installing a temporary irrigation system (if needed), planting vegetation, weeding and site monitoring, and all other costs associated with implementation of the Plan. The first performance bond will cover the initial costs of Plan implementation through to, and including, initial plant installation. Such bond will be released upon LANDOWNER having completed the initial Restoration Activities through to the point where initial plant installation has been completed and having provided written notice to the City evidencing such completion. The second performance bond will consist of an annual performance bond to cover the remaining cost of performing the Restoration Activities during Years 1-5 of the monitoring/maintenance phase of the Plan (defined as the "Monitoring Phase" for purposes of this paragraph). During the time required to complete the first year of the Monitoring Phase, this second performance bond shall be in an amount to cover the cost associated with the 5-year

Monitoring Phase of the Plan. At the end of Year 1 of the Monitoring Phase, this second performance bond will automatically expire upon: (1) LANDOWNER posting a performance bond in an amount to cover the Restoration Activities associated with Years 2 through 5 of the Monitoring Phase and (2) LANDOWNER providing a written certification to CITY that it has completed the Restoration Activities associated with Year 1 of the Monitoring Phase. At the end of Year 2, this second performance bond will automatically expire upon: (1) LANDOWNER posting a performance bond in an amount to cover the Restoration Activities associated with Years 3 through 5 and (2) LANDOWNER providing a written certification to CITY that it has completed the Restoration Activities associated with Year 2 of the Monitoring Phase. At the end of Year 3, this second performance bond will automatically expire upon: (1) LANDOWNER posting a performance bond in an amount to cover the Restoration Activities associated with Years 4 through 5 and (2) LANDOWNER providing a written certification to CITY that it has completed the Restoration Activities associated with Year 3 of the Monitoring Phase. At the end of Year 4, this second performance bond will automatically expire upon: (1) LANDOWNER posting a performance bond in an amount to cover the Restoration Activities associated with Year 5 and (2) LANDOWNER providing a written certification to CITY that it has completed the Restoration Activities associated with Year 4 of the Monitoring Phase. At the end of Year 5, this second performance bond will automatically expire upon LANDOWNER providing a written certification to CITY that it has met the final success criteria of the Plan. If LANDOWNER obtains a performance bond from one of its Agents to secure Agent's performance of work under the Plan, LANDOWNER shall name CITY as an additional beneficiary of such performance bond. CITY shall have the right to determine the amount of each performance bond required hereunder. LANDOWNER shall provide such information as CITY may deem necessary to determine the amount of such performance bonds. LANDOWNER shall also provide, or require its contractor or subcontractors to provide, payment bonds to ensure payment of all contractors, subcontractors, materialmen and laborers performing work or providing materials at the Restoration Site.

12. Design Plans and "As-Built" Plans. LANDOWNER shall provide CITY with an electronic (ACAD and MS Office) and "hard" copy of any and all final design plans, construction documents, permits, reports, biological reports, and other documentation relating to the Restoration Activities and any final "as built" plans for the Restoration Site, to assist CITY with its long-term management and monitoring of the Restoration Site.

13. Ownership of Improvements. Immediately upon installation, all improvements made to the Restoration Site shall become part of the realty and shall belong to CITY. Nothing herein shall relieve LANDOWNER from the obligation to maintain and restore any such improvements as called for herein until the time Landowner achieves the final success criteria of the Plan.

14. Transfer of Long-term Maintenance, Management and Monitoring Responsibilities for Restoration Site to CITY. The final success criteria of the Plan have been designed such that when they have all been met, the restored habitat at the

Restoration Site should be fully self-sustaining and should not require additional, man-induced assistance. The need for periodic monitoring of the site and control of artificial debris should be the same at the Restoration Site as it is for other areas of natural open space at Fairview Park. At such time as LANDOWNER has satisfied the final success criteria set forth in the Plan, LANDOWNER shall notify the City of Dana Point and CITY in writing that the final success criteria of the Plan have been met. At such time as the final success criteria have been met and the City of Dana Point and CITY have been so notified as set forth in paragraph 9 hereof, CITY shall assume any ongoing monitoring, management and maintenance of the Restoration Site in accordance with CITY's general program for such activities in other portions of Fairview Park.

15. Liens. LANDOWNER shall not permit to be enforced against the Restoration Site, or any part thereof, any mechanics', materialmen's, contractors' or subcontractors' liens or any claim for damage arising from the work of any excavation, survey, tests, repair, restoration, maintenance or improvement, performed by LANDOWNER or its Agents, and LANDOWNER shall pay or cause to be removed of record (by payment or bonding pursuant to statute) all of such liens, claims or demands within 30 days of notice thereof. LANDOWNER expressly agrees to protect, defend, indemnify and hold CITY free and harmless from all liability for any and all such liens, claims and demands, together with reasonable attorneys' fees and all costs and expenses in connection therewith.

16. Insurance.

(a) In addition to LANDOWNER's obligation to defend, indemnify and hold CITY harmless, LANDOWNER shall obtain and maintain at its own expense during the term of this MOA, policy or policies of liability insurance of the type and amounts described below and reasonably satisfactory to CITY. Insurance policies shall be signed by a person authorized by that insurer to bind coverage on its behalf and must be filed with CITY prior to performing work on the Restoration Site under the Plan.

(b) Prior to the commencement of work, LANDOWNER shall provide to CITY certificates of insurance from an insurance company certified to do business in the State of California, with original endorsements, evidencing the coverage required herein.

(c) LANDOWNER shall provide the following insurance, with Best's Class B or better carriers:

(i) Workers' Compensation insuring statutory Workers' Compensation limits as required by the California Labor Code;

(ii) Commercial general liability insurance covering third party liability risks, including without limitation, contractual liability, in a minimum amount of \$1,000,000 (one million) combined single limit per occurrence for bodily injury, personal injury and property damage. If the policy contains a general aggregate limit, then the aggregate limit shall not be less than \$2,000,000 (two million);

(iii) Commercial auto liability and property insurance covering all owned and rented vehicles of LANDOWNER or its Agents coverage Code 1 "any auto" with a minimum amount of \$2,000,000 (two million) combined single limit per accident for bodily injury and property damage;

(d) Endorsements to the policies providing the above insurance shall be obtained by LANDOWNER, adding the following three provisions:

(i) Additional Insured:

"The City of Costa Mesa and its elected and appointed boards, officers, agents, and employees as additional insured."

(ii) Notice:

"The policy shall not terminate, nor shall it be canceled nor the coverage reduced, until thirty (30) days after written notice is given to the City of Costa Mesa."

(iii) Other Insurance:

~~"Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."~~

(e) LANDOWNER shall give to CITY prompt and timely notice of any claim made or suit instituted arising out of LANDOWNER's performance of this Agreement. LANDOWNER shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and performance of the work under the Plan.

17. Hold Harmless. LANDOWNER shall indemnify, hold harmless, and defend CITY, its officers, agents and employees against any and all claims, demands, damages, costs, expenses or liability costs arising out of any violations of the California Labor Code or CalOSHA safety rules and requirements, and for any negligent acts or willful misconduct of LANDOWNER (or its officers, Agents, or employees) associated with the restoration, enhancement, monitoring or maintenance of the Restoration Site by LANDOWNER (or its officers, Agents, or employees) described above, except to the extent arising from the sole negligence or willful misconduct of CITY, its officers, agents or employees. CITY shall not be responsible for any loss or theft whatsoever of any property or anything placed or stored by LANDOWNER on or about the Restoration Site, and LANDOWNER waives all claims or demands against CITY for any such loss. LANDOWNER shall not be responsible for any claims, damages, costs, expenses or liability costs arising out of the acts of third parties who are not officers, Agents, or employees of LANDOWNER.

18. Defaults and Remedies. Either party may terminate this MOA for breach by the other party upon giving the other party written notice at least sixty (60) days prior to said termination date. In the event of any breach of this MOA by LANDOWNER, CITY shall notify LANDOWNER in writing of such breach, and

LANDOWNER shall have thirty (30) days in which to initiate action to cure said breach. In the event of any breach of this MOA by CITY, LANDOWNER shall notify CITY in writing of said breach, and CITY shall have thirty (30) days in which to initiate action to cure such breach. Should either party breach this MOA, the parties agree that monetary damages will not provide an adequate remedy for such breach and therefore that the aggrieved party shall be entitled to specific performance and injunctive relief.

19. Termination and Remedies. Unless sooner terminated by CITY by written notice of such termination delivered to LANDOWNER by CITY or unless otherwise specifically agreed to by CITY and LANDOWNER in writing, the right of entry granted by this MOA shall terminate at the time when LANDOWNER has met the success criteria of the Plan or at the end of the notification period provided for in paragraph 9 hereof, whichever is later.

20. Notices. All written notices pursuant to this MOA shall be addressed as set forth below or as either party may hereafter designate by written notice and shall be personally delivered or sent through the United States mail:

LANDOWNER:

Headlands Reserve, LLC
24849 Del Prado Avenue
Dana Point, CA 92629
Attn: Kevin Darnall

CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92628-1200
Attn: Public Services Director

21. Attorneys' Fees. In the event of any declaratory or other legal or equitable action instituted between CITY and LANDOWNER in connection with this MOA, the prevailing party shall be entitled to recover from the losing party all of its costs and expenses, including court costs and reasonable attorneys' fees.

22. Agreement in Counterparts. This MOA may be executed in counterparts, each of which shall be deemed an original.

23. Agreement in Writing. This MOA contains the entire agreement between the parties hereto and neither it nor any part of it may be changed, altered, modified, limited, or extended orally, or by any agreement between the parties unless such agreement is expressed in writing and signed by the parties, or their successors in interest.

24. Assignment and Successors in Interest. Unless otherwise provided in this MOA, the terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto, all of who shall be jointly and severally liable hereunder.

25. Effective Date. The effective date of this MOA ("Effective Date") shall be the first date after all of the following have occurred: (1) all necessary governmental permits, authorizations, and approvals have been issued to enable

LANDOWNER to perform the Restoration Activities in accordance with the Plan (including, but not limited to, any governmental approvals of the Plan itself), (2) all necessary permits, authorizations, and services have been secured from those utility providers required to implement the Plan, and (3) CITY has provided LANDOWNER with evidence of the execution of the Declaration of Restrictions relating to the Restoration Site, as described in paragraph 2 herein.

26. Acts Beyond the Control of Parties. In the event that CITY or LANDOWNER is wholly or partly prevented from performing obligations under this MOA because of causes beyond its reasonable control, including but not limited to, acts of God, labor disputes, lawsuits, sudden actions of the elements, actions of federal or state agencies or courts, or actions of local governments (herein, "force majeure"), CITY or LANDOWNER shall be excused from whatever performance is affected by such cause to the extent so affected, and failure to perform shall not be considered a material breach, provided that: (1) the suspension of performance is of no greater scope and no longer duration than is required by the force majeure, (2) within two weeks after the occurrence of the force majeure CITY or LANDOWNER gives the other party written notice describing the particulars of the occurrence; (3) CITY or LANDOWNER uses its best efforts to remedy its inability to perform (this provision shall not require the settlement of any strike, walk-out, lock-out, lawsuit or labor dispute on terms which, in the sole judgment of CITY or LANDOWNER, are contrary to its interests); and (4) when CITY or LANDOWNER is able to resume performance of its obligations hereunder, CITY or LANDOWNER shall give notice to the other party to that effect.

27. Miscellaneous. CITY acknowledges that the Restoration Activities to be conducted by LANDOWNER and its Agents are consistent with the Master Plan. LANDOWNER shall notify CITY of any approvals issued to LANDOWNER by the City of Dana Point or the California Coastal Commission pertaining to the Restoration Activities at the Restoration Site. No waiver of any of the provisions of this MOA shall be deemed or shall constitute a waiver of any other provisions, whether or not similar, nor shall any waiver be a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver. This instrument shall be construed and enforced in accordance with, and governed by, the laws of the State of California. If any term, covenant, condition, or provision of this MOA is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

IN WITNESS WHEREOF, the parties have executed this MOA this 13 day of October, 2005.

CITY OF COSTA MESA

By: 

Allan Mansoor, Mayor

HEADLANDS RESERVE, LLC

By: MPDSE Inc., a California
corporation, its Managing Member

By: 

Sanford Edward, President